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| APPLICATION NUMBER | FLING DATE | FIRST NAMED APPLICANT | ATTY. DOCKET NO. |
|---|------------|-----------------------|--------------------------------------|
| 08/876,812 | 06/17/97 | DOUGLAS | 08/876,812 EXAMINER |
| | | HM21/0928 | ART UNIT INCUBATOR 5 PAPER NUMBER |
| T GENE DILLAHUNTY BURNS DOANE SWECKER & MATHIS 3000 SAND HILL ROAD ALEXANDRIA VA 22313 | | 1641 DATE MAILED: | 09/28/98 |

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on 10/17/97
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.
- A shortened statutory period for response to this action is set to expire 10 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).
- Disposition of Claims**
- Claim(s) 1 - 51 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) _____ is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) 1 - 51 are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been
- received.
 received in Application No. (Series Code/Serial Number) _____
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of Reference Cited, PTO-892
 Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
 Interview Summary, PTO-413
 Notice of Draftsperson's Patent Drawing Review, PTO-948
 Notice of Informal Patent Application, PTO-152

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, drawn to an electrochemical test device, classified in class 422, subclass 82.01
 - II. Claims 17-32, drawn to a method for measuring an analyte, classified in class 422, subclass 98.
 - III. Claims 33-51, drawn to a method of making an electrochemical test device, classified in class 427, subclass 468.
2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together. The method of Invention II requires the use of a meter device which is not present in the device of Invention I.
3. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process. The product can be made by mechanically affixing the electrodes to the surface after formation without a deposition step and a chemical machining step.
4. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together and they have different effects. The method of Invention II is for measuring an analyte and the method of Invention III is for making an electrochemical test device. These methods have different effects.

Art Unit: 1641

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. The Group and Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group 1600, Art Unit 1641.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao-Thuy Nguyen whose telephone number is (703) 308-4243. The examiner can usually be reached Monday through Friday, from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is (703) 308-4242 or (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

BTN

September 24, 1998


JAMES C. HOUSEL 9/26/98
SUPERVISORY PATENT EXAMINER